In this case only the taxable costs were allowed; and, in that respect, it does not go as far as the rule laid down in *Rickert* vs. *Snyder* would warrant.

My conclusion therefore is, that there is no error in the report of the referee, and that the motion to set it aside must be denied.

District Court, City and County of Philadelphia, March, 1852.

JOHN R. BREITENBACH *vs.* CHARLES B. DUNGAN, *et al* EXECUTORS OF ELIHU D. TARR, GARNISHEE OF WILLIAM BOYER.

1. Where an estate to A, and his heirs, &c., is given in the premises of a deed, but the word "*heirs*" is omitted in the *habendum*, the latter may be disregarded, and A. will take an estate in fee.
2. It is no objection to an assignment for the benefit of creditors, stipulating a release, that the wife of a grantor does not join therein.

This was a motion for a rule for a new trial.

The facts of the case, and the grounds of the motion sufficiently appear in the opinion of the Court, which was delivered by

STROUD, J.—The plaintiff having obtained a judgment against Boyer, issued an attachment execution upon it, in which the late Elihu D. Tarr, Esq., was made a garnishee.

Boyer had made an assignment in trust for his creditors to Mr. Tarr. This assignment contained a stipulation for a release. According to *Thomas* vs. *Jenks*, 5 Rawle 221, and other decisions since, such a stipulation renders the assignment fraudulent and void as to non-assenting creditors, unless the *whole* of the assignor's estate is conveyed by it.

The plaintiff, upon grounds to be mentioned presently, contended that the assignment of Boyer did not convey the whole of his estate. It was in evidence that Boyer owned both real and personal property. In the premises of the assignment the word *heirs* is used in connection with the name of the assignee, but is omitted in the *habendum*. This omission, it is argued, abridged the fee which was conveyed by the premises.

The authority for this position is the expression in Blackstone, that the *habendum* may lessen the estate granted in the premises. The meaning of this is to be found in the example which he gives, viz: that if a grant be in the premises to A, and his heirs, it may be qualified by the *habendum*, by limiting it to A, and the heirs of his body. In both instances the fee is conveyed, but the fee simple, which is granted in the premises, is defined in the habendum to be an estate tail. In this there is no contradiction—nor does the law allow a contradiction. This is expressly stated by Blackstone, and he gives this illustration. "Had it been in the premises, to him and his heirs, *habendum*, to him for life, the *habendum* would be utterly void, for an estate of inheritance is vested in him before the *habendum* comes, and shall not afterwards be taken away or divested by it," 2 Bl. Com. 298. The language of Chief Justice Tilghman, on this subject in *Wager* vs. *Wager*, 1 S. & R. 375, is very clear and satisfactory. "One of the most important rules," he says, "in the construction of deeds is, so to construe them that no part shall be rejected. The object of all construction is to ascertain the intent of the parties, and it must have been their intent to have some meaning in every part. It never could be a man's intent to contradict himself, therefore we should lean to such a construction as reconciles the different parts, and reject a construction which leads to a contradiction."

To say that after Boyer in the *premises*, had granted an estate in fee, he in the *habendum* intended that no inheritance should be conveyed, would be to ascribe to him two opposite and contradictory intentions. No authority, we believe, can be vouched for this.

In the *Earl of Rutland's* case, 8 Co. 112, Lord Chief Justice Coke says, "it was resolved in Auditor King's case, that where Queen Elizabeth granted a manor to B and his heirs, in the *premises* of the letters patent, to have and to hold the said manor to B and *his assigns*, (leaving out *heirs* in the *habendum*,) that the fee of the manor did pass by the premises, and the habendum was void, for the premises were certain enough to pass the fee simple, and the omission of heirs in the *habendum* should not overthrow that which was certain in the *premises*; which case was affirmed for

good law, *per totam curiam.*" This case is cited and approved by Yeates, J., in *Wager* vs. *Wager*, supra.

This is, in substance, our case; we retain the *premises* but reject the *habendum*. The omission of *heirs* in the latter, ought no doubt, to be set down as a clerical mistake. But by disregarding the *habendum* altogether, the legal effect is the same.

The second objection is, that the wife of Boyer did not join in the assignment. This, it is supposed, even if the word *heirs* was found in both the premises and the habendum, would leave a portion of the debtor's estate in him, not conveyed by the assignment.

We do not agree to this view at all. The deed passed all the estate of the husband, although his wife was not a party. It did not, it is true, pass the wife's interest—her right of dower. But that can in no sense be called *his* estate. Besides what right had he to expect his wife to surrender the interest which the law had given her in his real property, or what means are to be presumed as within his power to induce her to join in the deed. Unless her concurrence were *voluntary*, the act would be invalid, and *non constat*, that she was willing to join in the deed.

Both of the points which we have noticed were ruled on the trial in accordance with our opinion here expressed, and we accordingly refuse the rule for a new trial.

Rule refused.

Louisville Chancery Court, Kentucky, Oct. 1852.

HAYDON AND RODMAN *vs.* FIELD AND JONES.

1. A foreign attachment was levied on debts generally. The garnishees had given to the defendant a blank bill of exchange, for a debt due him, on which bill they had written their acceptance. Subsequently to the attachment, the defendant filled up the blanks to his own order and endorsed the bill to a purchaser for value without notice. *Held* that the doctrine of *lis pendens* did not apply; that the endorser of the bill took a good title; and that the garnishee was discharged.
2. A bill of exchange accepted, without any name of drawer or payee, is nevertheless a regular instrument by the Law Merchant; and the holder may, on a sale thereof, fill up the blanks for the benefit of the purchaser, in good faith, and when so filled, the bill will stand as though so made originally.